

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Criminal No. 06-cr-071-JD

Elaine A. Brown and
Edward Lewis Brown

SEALED ORDER

The United States of America has filed a verified ex parte application pursuant to 18 U.S.C. § 982(b)(1) and 21 U.S.C. § 853(e)(1) for a post-indictment restraining order on two parcels of real property, which are named in the Notice of Forfeiture in the indictment in this case. The government applies for the order to protect those parcels of property through the duration of this criminal proceeding in order to preserve them for forfeiture. The government asserts that such an order may be issued based on the grand jury's indictment of Elaine A. Brown and Edward Lewis Brown. The government, however, has not provided sufficient briefing to support such an order.

In particular, the government has not addressed the due process concerns that other courts have recognized may be implicated by an ex parte restraining order imposed for an unlimited duration, without an opportunity provided to interested parties to be heard. See, e.g., United States v. Holy Land

Found. for Relief & Dev., 2006 WL 853334 (5th Cir. Apr. 4, 2006) (discussing issue and citing cases). Although the First Circuit has not directly addressed the due process concerns that have been raised in applying § 853(e)(1), that court has noted the issue of "whether the Due Process Clause may sometimes require that interested parties be given an opportunity to challenge a restraining order, on the merits of the indictment if necessary, before the entry of forfeiture." United States v. Real Prop. in Waterboro, 64 F.3d 752, 757 (1st Cir. 1995) (citing cases).

Conclusion

For the foregoing reasons, the government's ex parte application (document no. 7) is denied without prejudice to refile along with supplemental briefing that sufficiently addresses the issues and cases noted in this order.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

April 19, 2006

cc: Jean B. Weld, Esquire